

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:03CR84 MAC/DDB
	§	
JIMMY RAY EARL MERRIFIELD (11)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on May 4, 2016 to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Ernest Gonzalez.

On January 6, 2004, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence on Count 1 of 262 months imprisonment followed by a 5-year term of supervised release (to be served concurrently with Count 19) for the offense of Conspiracy to Distribute or Possess with Intent to Manufacture, Distribute, and Dispense Methamphetamine. Defendant was sentenced on Count 19 to 120 months imprisonment followed by a 3-year term of supervised release (to be served concurrently with Count 1) for the offense of Possession of a Firearm by a Drug User. Defendant began his term of supervision on March 27, 2015. This case was transferred to the Honorable Marcia A. Crone on October 15, 2015.

On March 17, 2016, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 985). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or

local crime; (2) Defendant shall refrain from any unlawful use of a controlled substance; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or paraphernalia related to such substances, except as prescribed by a physician; and (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is release from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On November 4, 2015, Defendant was charged with Theft Over \$50, Under \$500 for an offense that occurred on July 16, 2015. On March 7, 2016, Defendant reported to the U.S. Probation Office in Plano, Texas and knowingly delivered a substance, namely an unknown individual's urine, in order to falsify a drug test. Defendant was in possession of a device used to falsify a drug test. Defendant signed an admission form confirming he attempted to adulterate the urine sample by providing urine that did not belong to him. This is a violation of Texas Health and Safety Code § 481.133: (2) On May 26, 2015, Defendant submitted a urine specimen that tested positive for methamphetamine. Defendant admitted in writing to using methamphetamine the day prior; (3) On August 27, 2015, Defendant submitted a urine specimen that tested positive for methamphetamine. Defendant admitted in writing to using methamphetamine the day prior. On February 3, 2016, Defendant submitted a urine specimen that tested positive for methamphetamine. This specimen was confirmed positive by Alere Laboratories, Inc.; On March 7, 2016, Defendant submitted a urine specimen that tested positive for methamphetamine. Defendant admitted in writing to using methamphetamine; and (4) Defendant failed to report for scheduled drug testing s directed, and as part of the U.S. Probation Office's

random drug testing program at OnScene Drug Testing in Sherman, Texas, on February 19, 2016, and March 8, 2016.

At the hearing, Defendant entered a plea of true to allegation two. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the May 4, 2016 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-four (24) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in FCI Carswell, if appropriate.

SIGNED this 6th day of May, 2016.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE